



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 1, 1998

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR98-2906

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 120269.

The City of Houston (the "city") received a request for all documents related to a particular lawsuit, cause no. 90-26712. You inform us that you will release most of the requested information. You claim that some of the requested information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that portions of the requested information may be withheld as attorney work product under section 552.111. A governmental body may withhold attorney work product from disclosure under section 552.111 if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996). The first prong of the work product test, which requires a governmental body to show that the documents at issue were created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. Open Records Decision No. 647 at 4 (1996).

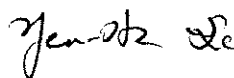
You indicate that the information at issue was prepared in anticipation of litigation or after the lawsuit was filed. We find that you have demonstrated in this case that the documents at issue were created in anticipation of litigation. You have established the applicability of both parts of the first prong of the work product test.

The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories. You argue that certain portions of the requested information reflect the city attorneys' mental processes, conclusions, and theories relating to the litigation, and that "[d]raft documents which reflect the attorneys' comments or other notations to the client/drafter or another attorney necessarily represent the attorneys' mental processes, conclusions, and legal theories about the case in relation to the form and content of each final document." Based on your arguments, we find that you have established the second prong of the work product test for most of the information you have marked. You may withhold most of the information you have marked as attorney work product under section 552.111. We have marked the information that you must release as it does not constitute attorney work product under section 552.111. We need not address your section 552.107 claim for those portions that you may withhold under section 552.111.

Next, we will consider the information which you claim is excepted from public disclosure by section 552.107 only. Section 552.107(1) excepts from public disclosure information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions. Open Records Decision No. 574 (1990). Basically factual information is not protected. *Id.* We have reviewed the submitted information and agree that you may withhold the information you have marked as excepted from public disclosure by section 552.107.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 120269

Enclosures: Marked documents

cc: Ms. Rosemari Shepard
RMS Houston Associates
P.O. Box 16403
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(w/o enclosures)